Supreme Court, U.S.
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No. 02-1309

In the

Supreme Court of the United States

DELBERT STANFIELD,

Petitioner,

v.

CITY OF FLORENCE, ALABAMA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Gregg L. Smith
Counsel of Record
4905 Branch Mill Circle
Birmingham, AL 35223
(205) 956-0101
Attorney for Respondent

CURRY & TAYLOR ♦ (202) 393-4141 ♦ HTTP://USSCINFO.COM

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QUESTION PRESENTED

Respondent submits that the following question more accurately reflects the fundamental legal defect in Petitioners's suit:

> Did the Court of Appeals correctly hold that failure of Petitioner to raise a disputed issue in the pretrial order for which he had the burden of proof and to prove this essential element of his case at trial was sufficient grounds for granting Respondent's motion for a judgment as a matter of law?

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STATEMENT OF THE CASE

Plaintiff Delbert Stanfield made several representations to the Court in his Statement of the Case that are either misleading or completely false. It is incumbent upon the Defendant, the City of Florence, Alabama ("City"), to point out these errors so the Court will not be misled by these statements.

First, Plaintiff claims in his Statement of the Case that, "There was nothing in the pretrial order to indicate that satisfaction of conditions precedent was disputed." (Plaintiff Delbert Stanfield's Petition for Writ of Certiorari ("Petition") at p. 2.) While this is a correct statement, it is nevertheless misleading. Indeed, the issue of satisfaction of conditions precedent was not mentioned in the pretrial order because Plaintiff failed to raise the issue, even though he had the burden of proof on this material issue. Defendant had denied that Plaintiff had satisfied conditions precedent in its Answer. Therefore under applicable law, Plaintiff had the burden to prove that the conditions had been met, a burden he failed to meet at trial. Omission of the fact that the issue of conditions precedent was in dispute in the pretrial order was Plaintiff's error.

Second, when addressing the contents of the pretrial order, Plaintiff provides to the Court the following statement, "There was absolutely nothing stated by the City in its position statement that placed that issue in dispute. It was obvious to counsel and the district judge that this was not in dispute and was not an issue to be tried. This is the very reason the City did not preserve it. Therefore, there was no issue to be tried relating to satisfaction of any condition precedent." (Petition at p. 2-3.) In this statement, Plaintiff

speculates as to what was known by the district judge and by counsel of the Defendant. Moreover, Plaintiff even professes to know the trial strategy of Defendant's counsel and why he did not "preserve" an affirmative defense in the pretrial order. It should be made known to this Court, that Defendant's counsel always believed that the satisfaction of conditions precedent was an issue in dispute and that the burden was on Plaintiff to prove this issue. Plaintiff's failure to raise the issue in the pretrial order was immediately noted by Defendant's counsel. Lastly in this excerpt from Plaintiff's Petition, Plaintiff makes a ruling of law by proclaiming that "there was no issue to be tried relating to satisfaction of any condition precedent." (*Id.* at 3.) Apparently, the Eleventh Circuit Court of Appeals did not agree with this legal conclusion of Plaintiff.

Third, when addressing the district court's denial of Defendant's Motion for Judgement as a Matter of Law, Plaintiff provides, "Each Motion was denied without opinion, the district judge exercising her discretion to hold that the matter was not an issue before the district court because it had not been preserved in the pretrial order." (*Id.* at 3.) Even though no opinion was issued, Plaintiff proclaims to be capable of ascertaining the basis for the denial of Defendant's Motions by the district court. This statement by Plaintiff is not supported by any fact and is clearly only a self-serving and speculative opinion.

Fourth, Plaintiff also places a misleading interpretation on the ruling by the Eleventh Circuit Court of Appeals in this matter. Plaintiff provides that, "Ignoring the pretrial order, and Fed. R. Civ. P. 1 and 16, the court held that whether Stanfield had filed suit timely after receipt of the Right to Sue Letter was an

issue for trial." (*Id.* at 3.) In fact, the appellate court did consider the Federal Rules of Civil Procedure and the contents of the pretrial order in holding that Plaintiff failed to raise the issue of satisfaction of conditions precedent in the pretrial order. (*Stanfield v. City of Florence, Alabama*, No. 01-16617 (11th Cir. 2002), attached to Plaintiff's Petition as Appendix A, at App. 5-6.) According to the appellate court and following binding precedent, the failure by Plaintiff to raise this essential element of his case and prove it at trial was fatal to Plaintiff's claim. (*Id.*)

Lastly, Plaintiff makes this cryptic statement, "[T]he case is about whether matters that are not the subject of honest disputes of fact or law and are not preserved in the pretrial order must still be proven at trial." (Plaintiff's Petition at 4.) In reality, this case, on a petition for writ of certiorari, should concern whether the decision of the Eleventh Circuit is in conflict with other circuit courts of appeal or this case is one requiring an ruling on an important issue of law.

Rather than making a factual statement to this Court concerning the proceedings of this case in the lower courts in his Statement of the Case, Plaintiff attempts to persuade the Court with misleading statements, opinion, conjecture and false rhetoric. This Court should not be so persuaded by Plaintiff.

REASONS FOR NOT GRANTING THE WRIT

Plaintiff provides two theories on why this Court should grant Plaintiff's Petition for Writ of Certiorari. First, Plaintiff asserts that the Eleventh Circuit Court of Appeals made a ruling in this case that "directly contradicts holdings by the Fourth, Seventh, and D.C. Circuits and weakens Fed. R. Civ. Pro. 16." (Plaintiff's Petition at 4.) Additionally, Plaintiff asserts that the standard for review in this case by the Eleventh Circuit should have been "abuse of discretion." (*Id.*) Second, Plaintiff claims that the Writ should be granted because this case involves an "important issue of federal law that has not been, but should be, settled by this Court." (*Id.*)

Defendant's response to these arguments is that, first, the decision in this case by the Eleventh Circuit does not contradict any decisions by other circuit courts of appeal. Additionally, the Eleventh Circuit was reviewing an appeal of the denial of Defendant's Fed. R. Civ. P. 50 motions. The proper standard of review for such an appeal is *de novo*.

Second, this case does not involve an "important issue" that should be addressed by this Court. The issue in this case is whether Plaintiff met his burdens of proof at the district court trial. Clearly, this is a burden Plaintiff did not meet and this case has nothing to do with interpretation of federal laws or the Federal Rules of Civil Procedure.

ARGUMENT

I. Certiorari is not warranted because the decision by the Eleventh Circuit in the case does not conflict with holdings of other Circuit courts.

Plaintiff argues that his Writ should be granted because the decision in this case by the Eleventh Circuit Court of Appeals and a decision by the Fifth Circuit Court of Appeals relied on by the Eleventh Circuit conflict with cases decided by the Fourth, Seventh and D.C. Circuit Courts of Appeal. This argument is without merit.

The decisions of the Eleventh Circuit in this case and the Fifth Circuit in *Pacific Indemnity Co . v. Broward County*, 465 F. 2d 99 (5th Cir. 1972) addressed whether a party could waive or admit an issue as to which an opposing party has the burden of proof by failing to include the issue in the pretrial order. *Stanfield* at App. 5; *Pacific*, 465 F. 2d at 103. In both cases, the appellate courts followed Federal Rule of Civil Procedure 16 in finding that nothing in that Rule requires a party to raise issues that are the burden of the opposing party or else those issues are admitted or waived. *See Ramada Development Co. v. Rauch*, 644 F. 2d 1097, 1111 (5th Cir. 1981).

Plaintiff asserts that these holding conflict with the D.C. Circuit's decision in *Smith v. Washington Sheraton Corp.*, 135 F. 3d 779, 784 (D.C. Cir. 1998). This legal conclusion is misplaced. In *Smith*, the plaintiff alleged in the pretrial order that the defendants "are the owners, operators, and parent corporations of the hotel" in a premises liability claim. *Id.* at 784. The defendants

in *Smith* did not dispute this fact in the pretrial order. *Id.* One of the defendants in *Smith* argued on appeal that the plaintiff did not introduce any proof of ownership or control of the hotel. *Id.* at 783. Under the governing law in the *Smith* case, a plaintiff had the burden of proving that the defendant owned or controlled the property. *Id.* at 784. The court in *Smith* held that "a defendant waives any objection [regarding ownership or control] if the defendant fails to raise lack of ownership or control as a defense in the face of the plaintiff's pretrial statement clearly asserting the contrary." *Id.* at 784. This decision is not in conflict with the Eleventh Circuit in the case at hand. The *Smith* court follows the rationale of the Eleventh Circuit that a party who fails to assert a claim or defense on which it has the burden of proof in the pretrial order admits or waives that issue.

In the present case, Plaintiff did not raise the issue of having satisfied the conditions precedent to filing his age discrimination case in the pretrial order. Unlike the *Smith* case, the issue in question was not raised by the party with the burden of proof. Therefore, any defense to the satisfaction of conditions precedent was not waived by Defendant because Plaintiff had the burden to prove the disputed issue. This factual distinction makes Plaintiff's argument that the *Smith* holding is in conflict with the Eleventh Circuit's decision in the instant case completely without merit.

Plaintiff also has misinterpreted the holdings in the other two cases he claims are in conflict with the Eleventh Circuit's decision in this case. In *McLean Contracting Co. v. Waterman Steamship Corp.*, 277 F. 3d 477 (4th Cir. 2002), the appellate court upheld the district court's decision to exclude evidence related to a

defense not presented in the pretrial order. *Id.* at 480. In *McLean*, the plaintiff raised the issue of agency in the pretrial order and defendant failed to raise a countering affirmative defense. *Id.* at 480. When the defendant in *McLean* tried to introduce evidence of this defense, the district court denied the admission of the evidence based upon the fact that the defense was not raised in the pretrial order. *Id.* at 479. Plaintiff has falsely characterized the facts in *McLean* to try to create a dispute between the circuit courts of appeal where none exists.

Plaintiff also wrongly asserts that *Gorlikowski v. Tolbert*, 52 F. 3d 1439 (7th Cir. 1995) is in conflict with the case at hand. In *Gorlikowski*, the district court denied defendant's request for a change in instructions to the jury to reflect a theory of defense to liability not raised in the pretrial order. *Id.* at 1443. As in *Smith* and *McLean*, the issue in dispute was raised by the plaintiff in the pretrial order, but the theory of the defense was not raised by the defendant. *Id.* at 1442-44. Clearly, *Smith*, *McLean*, and *Gorlikowski* are factually different from the case at hand and do not conflict with the findings of the Eleventh Circuit.

In the instant case, Plaintiff seeks to have the Court grant his Petition when there is no dispute between any circuit courts of appeal. Only Plaintiff's twisted misinterpretation of case law serves as a basis for this Petition. For that very reason, the Court should deny Plaintiff's Petition.

Additionally, Plaintiff erroneously claims that the standard for review of this matter by the Eleventh Circuit should have been "abuse of discretion." The Eleventh Circuit properly reviewed the denial of the

City's Fed. R. Civ. P 50 Motion by the district court under the *de novo* standard. *Gupta v. Florida Board of Regents*, 212 F. 3d 571, 582 (11th Cir. 2000), *cert. denied*, 531 U.S. 1076 (2001). Plaintiff offers no reason in his Petition why this standard of review was incorrect. In fact, Plaintiff relies upon the *Smith* case in which the D.C. Circuit Court of Appeals used the *de novo* standard when reviewing the decision of the district court that granted defendants' motions for judgement as a matter of law. *Smith*, 135 F. 3d at 782. The *McLean* case was reviewed for abuse of discretion because it concerned a ruling of evidence by the district court. *McLean*, 277 F. 3d at 479. Similarly, *Gorlikowski* was on review under an abuse of discretion standard because it involved consideration of the district court's ruling on jury instructions. *Gorlikowski*, 52 F. 3d at 1444. Plaintiff's failure to provide this Court with any legal basis for the claim that the standard of review used by the Eleventh Circuit was inappropriate establishes the lack of credibility in Plaintiff's argument.

In the case before this Court, there is no dispute between the circuit courts of appeals as claimed by Plaintiff as a basis for granting his Petition. Further, the standard of review of *de novo* was properly used by the Eleventh Circuit Court of Appeals in this case. For these reasons, Plaintiff's Petition for Writ of Certiorari should be denied.

II. This case does not involve an important issue of law that demands review by this Court.

Plaintiff's second argument supporting his Petition for a Writ of Certiorari has even less legal foundation than his first. Plaintiff wrongly argues that

his burden of proving the conditions precedent to filing his age discrimination in the district court somehow became Defendant's burden. Plaintiff improperly asserts that because the Defendant did not challenge satisfaction of conditions precedent in the pretrial order, that issue was improperly decided by the Eleventh Circuit. The Eleventh Circuit properly found that Defendant had contested that Plaintiff had satisfied conditions precedent in its Answer which then shifted the burden of proof to Plaintiff. (Petition at App. A, at App. 4, *citing*, *Green v. Union Foundry Co.*, 281 F. 3d 1229, 1234 (11th Cir.), *cert. denied*, 123 S. Ct. 422 (2002); *Maynard v. Pneumatic Products Corp.*, 256 F. 3d 1259, 1264 (11th Cir. 2001).

Plaintiff's own citations in support of his position establish that his argument is without merit. Plaintiff provides that "This Court has held that the pretrial order 'conclusively establishes' the disputed issues to be tried. *United States v. Hougham*, 364 U.S. 310, 315 (1960)." (Plaintiff's Petition at p. 9.) What Plaintiff fails to note is that the issue of satisfaction of conditions precedent was an issue that he failed to raise in the pretrial order. Therefore, under the case cited by Plaintiff, he should have been precluded from arguing the issue at trial. *Elvis Presley Enterprises, Inc. v. Capece*, 141 F. 3d 188, 206 (5th Cir. 1998) ("[I]f a claim or issue is omitted from the order, it is waived, even if it appeared in the complaint."). Plaintiff's failure to assert that conditions precedent had been satisfied in the pretrial order and to prove that issue at trial was fatal to his claim. The Eleventh Circuit corrected reversed the district court's denial of Defendant's Rule 50 Motion on these grounds. A review by this Court of the Eleventh Circuit's *per curiam* decision is not warranted.

CONCLUSION

For the lack of legal cause presented by Plaintiff, this Honorable Court should deny Plaintiff's Petition of Writ of Certiorari.

Respectfully submitted,

Gregg L. Smith
Counsel of Record
4905 Branch Mill Circle
Birmingham, AL 35223
(205) 956-0101
Attorney for Respondent